

## Attachment 2

### Recommended Mercury Rule Language Changes

Representative DuWayne Johnsrud and Senator Neal Kedzie, the Chairs of the Assembly Natural Resources Committee and the Senate Environment and Natural Resources Committee, have requested changes to the mercury rule (AM-27-01, LRC 01-081) adopted by the Natural Resources Board at its June 2003 meeting. In response to the legislators' request, the following changes are recommended to the mercury rule.

- 1) Add a new section to the rule to recognize the statutory requirements regarding the impact of a subsequently adopted federal emission standard for mercury from major utilities under either section 111 or 112 of the federal Clean Air Act.

On page 7, after "NR 446(title) **Subchapter II – Control of the Atmospheric Deposition of Mercury.**", add the following section:

**"NR 446.029 Adoption of federal mercury standard.** If a federal emission standard limiting mercury emissions from a major utility is promulgated under section 111 or 112 of the federal clean air act, the department shall adopt a similar standard, including administrative requirements that are consistent with the federal administrative requirements. The standard adopted by the department may not be more restrictive in terms of emission limitations than the federal standard. The administrative requirements of the standard adopted by the department relating to baseline calculations, monitoring, recordkeeping and reporting shall be the same as the federal standard. No later than 18 months after the promulgation of a federal emission standard limiting mercury emissions from a major utility, the department shall revise this subchapter under the provisions of s. 227.10 or 227.24, Stats., as appropriate, to comply with the provisions of this section and s. NR 446.06(4)."

- 2) Modify the period for the sampling of fuel mercury content required for determining the baseline from the calendar year of 2004 to the 12 months following rule promulgation.

On page 7 and 8 of the rule change the following subsections of section NR 446.04 to read as follows:

"(1) No later than the first day of the 2<sup>nd</sup> month beginning after the effective date of the rule and continuing for a calendar twelve month period, a representative sample shall be collected weekly for each solid fossil fuel used in the emissions unit in that week. Each weekly sample of a fuel collected under this subsection shall be composited into a monthly sample that shall be analyzed for mercury content using ASTM D3684-01, incorporated by reference in s. NR 484.10(47m), or an equivalent method approved by the department"

"(4) The information gathered in subs. (1) and (2) shall be multiplied by the corresponding fuel consumption rates determined under sub. (3) to determine the total annual mercury contained in each fuel."

“(5) The mercury content for each fuel, on a mmBtu-basis, shall be computed by dividing the results of sub. (4) by the amount of each fuel burned, in mmBtus, during the twelve month sampling period.”

“(6) The mercury emissions for 2002, 2003, and the 12 months identified in sub. (1) shall be calculated by multiplying the results of sub. (5) times the annual fuel consumption for each of those years.”

“(7) The baseline mercury emissions shall be the 3-year arithmetic average of the mercury emissions determined under subs. (4) and (6) for 2002, 2003, and the 12 months identified in sub. (1)”

**3)** Include language in the mercury rule expressing the objective of reducing mercury emissions from major utilities by 80% by 2018 as measured from baseline mercury emission levels.

On page 9 of the rule, add the following section immediately after s. NR 446.05:

**“NR 446.055 Mercury emission reduction goal.** It is the goal of the department to encourage the major utilities to achieve the maximum amount of mercury emission reductions reasonably achievable from all stationary sources of the major utilities in the state. Specifically, the department’s objective is to work with the major utilities to achieve an 80% reduction in mercury emissions by 2018, as measured from the baseline mercury emissions for the major utilities’ stationary sources, as determined by the department under s. NR 446.03.”

**4)** Change the mercury emission reduction requirement, which becomes applicable on January 1, 2015 from 80% to 75%:

On page 9 of the rule, change section NR 446.06(3) to read as follows:

“(3) Beginning January 1, 2015, no owner or operator of a major utility may cause, allow or permit mercury emissions from all stationary sources of the major utility on an annual basis in an amount which exceeds 25% of the baseline mercury emission for the major utility’s stationary sources, determined by the department under s. NR 446.03.”

**5)** Include language that provides an option for a major utility to exempt units less than 25 MW from mercury reduction requirements. This option would apply to Dairyland Power Alma Units 1, 2, & 3 and WE Energies County Units 1, 2, & 3.

On page 9 of the rule change the following subsections of section NR 446.06 to read as follows:

“(1)(a) Except as provided in sub. (4), beginning January 1, 2008, no owner or operator of a major utility may cause, allow or permit mercury emissions from stationary sources of 25 megawatts or greater of the major utility on an annual basis in an amount which exceeds the controlled mercury emissions for those units, determined by the department under par. (b).”

“(2) Except as provided in sub. (4), beginning January 1, 2010, no owner or operator of a major utility may cause, allow or permit mercury emissions from stationary sources of 25 megawatts or greater of the major utility on an annual basis in an amount which exceeds 60% of the baseline mercury emissions for those units, determined by the department under s. NR 446.03.”

“(3) Except as provided in sub. (4), beginning January 1, 2015, no owner or operator of a major utility may cause, allow or permit mercury emissions from stationary sources of 25 megawatts or greater of the major utility on an annual basis in an amount which exceeds 25% of the baseline mercury emissions for those units, determined by the department under s. NR 446.03.”

“(4) Stationary sources of less than 25 megawatts owned or operated by a major utility for which baseline emissions have been determined by the department under s. NR 446.03 and for which controlled emissions are determined by the department under par. (b), may be included by the major utility in meeting the emission limit requirements of sub. (1), (2), and (3). Mercury emissions for units included under this subsection shall be computed in the determination of controlled mercury emissions under par. (1) and the baseline emissions subject to the emissions limits under par. (2) and (3) and shall be subject to the compliance and reporting requirements of NR 446.08.”

**6)** Include a new subsection in the emission reduction requirements of the rule acknowledging the Department’s responsibility to meet the requirements of the s. 285.27, Wis. Stats., as affected by 2003 WI Act 118, to reconcile the rule with any federal standard regulating mercury emissions from electric utilities, including the requirement that the emissions limitations not be more restrictive than the federal standard.

On page 9 of the rule, add the following subsection (4) to section NR 446.06:

“(4) Pursuant to s. 285.27 (1)(a) and (2)(a), Wis. Stats., if an emission standard regulating mercury emissions from a major utility is promulgated under section 111 or 112 of the federal clean air act, the department shall promulgate a similar standard, including administrative requirements that are consistent with the federal administrative requirements. The department’s standard shall have the same mercury emission reductions as the federal standard.”

**7)** Include a note following the rule provisions relating to multi-pollutant reduction alternatives to reference Environmental Cooperative Agreements (such as that signed by the Department and WEPCO on September 30, 2002) as a potential basis for a multi-pollutant reduction alternative.

On page 11 of the rule, insert the following note after section NR 446.07:

“NOTE: Any Environmental Cooperative Agreement that the Department has signed with a major utility prior to the effective date of this rule and that includes multi-pollutant emission reductions may be used by the major utility as the basis of a request for a multi-pollutant reduction alternative under s. NR 446.07.”

8) Include a new section in the rule allowing for the generation of early emission reduction credits, which may be utilized by major utilities to achieve compliance with the emission limitations prior to 2018.

On page 11 of the rule, insert the following section after section NR 446.07

**“NR 446.075 Early emission reduction credits.** The owner or operator of a major utility that reduces mercury emissions from a stationary source of the major utility on or after (...the effective date of this rule...revisor inserts date...) and prior to January 1, 2015, may request that the department certify the emission reductions as early emission reduction credits. The department shall certify the emission reductions, in terms of pounds of mercury emissions reduced, as early emission reduction credits if the owner or operator demonstrates to the department that the reductions are actual, permanent mercury emission reductions that are not required under any state or federal law or air permit condition. Any mercury emission reduction credits may be used by the owner or operator of the major utility to meet the annual emission limitations in s. NR 446.06(2) and (3) during calendar years 2010 through 2017.”

9) and 10) Modify the periodic evaluation and reconciliation report provisions of the rule to include the legislative standing committees as recipients of the reports, providing the committees with an opportunity to monitor the rule’s implementation and the appropriateness of the Department’s response to mercury control technology developments. In addition, include a reference to section 111 as a potential source of federal mercury regulations.

On page 15-16, change s. NR 446.12 (1)(intro.) and (2)(intro.) to read as follows:

“(1) The department staff shall submit reports to the natural resources board and the legislative standing committees by January 1, 2006, by January 1, 2009 and by January 1, 2013. Each report shall include: “

“(2) In addition to the reports required under sub. (1), the department staff shall report to the natural resources board and the legislative standing committees within 6 months of the date of the promulgation of a federal regulation under section 111 or section 112 of the Act or the enactment of a federal law that has mercury reduction requirements for mercury emission sources affected by this subchapter. The report shall include:”